

The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LAURA BENNETT,

Plaintiff,

v.

ASCENTIS CORPORATION, A Delaware
Corporation, doing business in Washington,

Defendant.

NO. 2:18-cv-01388-RSL

[PROPOSED]
STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

STIPULATED PROTECTIVE ORDER - 1
(2:18-cv-01388-RSL)

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1 **2. “CONFIDENTIAL” MATERIAL**

2 “Confidential” material shall include the following documents and tangible things
3 produced or otherwise exchanged: personnel records, disciplinary or corrective action records,
4 salary information, employee training materials, communications and other documents
5 containing information regarding Defendant’s proprietary products, services and business
6 plans, and documents constituting or relating to Plaintiff’s medical records.

7 **3. SCOPE**

8 The protections conferred by this agreement cover not only confidential material (as
9 defined above), but also (1) any information copied or extracted from confidential material; (2)
10 all copies, excerpts, summaries, or compilations of confidential material; and (3) any
11 testimony, conversations, or presentations by parties or their counsel that might reveal
12 confidential material.

13 However, the protections conferred by this agreement do not cover information that is
14 in the public domain or becomes part of the public domain through trial or otherwise.

15 **4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

16 4.1 Basic Principles. A receiving party may use confidential material that is
17 disclosed or produced by another party or by a non-party in connection with this case only for
18 prosecuting, defending, or attempting to settle this litigation. Confidential material may be
19 disclosed only to the categories of persons and under the conditions described in this
20 agreement. Confidential material must be stored and maintained by a receiving party at a
21 location and in a secure manner that ensures that access is limited to the persons authorized
22 under this agreement.

23 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
24 ordered by the court or permitted in writing by the designating party, a receiving party may
25 disclose any confidential material only to:

- 1 (a) the receiving party's counsel of record in this action, as well as
2 employees of counsel to whom it is reasonably necessary to disclose the
3 information for this litigation;
- 4 (b) the officers, directors, and employees (including in house counsel) of the
5 receiving party to whom disclosure is reasonably necessary for this
6 litigation, unless the parties agree that a particular document or material
7 produced is for Attorney's Eyes Only and is so designated;
- 8 (c) experts and consultants to whom disclosure is reasonably necessary for
9 this litigation and who have signed the "Acknowledgment and
10 Agreement to Be Bound" (Exhibit A);
- 11 (d) the court, court personnel, and court reporters and their staff;
- 12 (e) copy or imaging services retained by counsel to assist in the duplication
13 of confidential material, provided that counsel for the party retaining the
14 copy or imaging service instructs the service not to disclose any
15 confidential material to third parties and to immediately return all
16 originals and copies of any confidential material;
- 17 (f) during their depositions, witnesses in the action to whom disclosure is
18 reasonably necessary and who have signed the "Acknowledgment and
19 Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the
20 designating party or ordered by the court. Pages of transcribed
21 deposition testimony or exhibits to depositions that reveal confidential
22 material must be separately bound by the court reporter and may not be
23 disclosed to anyone except as permitted under this agreement;
- 24
25

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

4.3 Filing Confidential Material. Before filing confidential material or discussing or referencing such material in court filings, the filing party shall confer with the designating party to determine whether the designating party will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or non-party that designates information or items for protection under this agreement must take care to limit any such designation to specific material that qualifies under the appropriate standards. The designating party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify, so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this agreement.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to unnecessarily encumber or delay the case development process or to impose unnecessary expenses and burdens on other parties) expose the designating party to sanctions.

If it comes to a designating party's attention that information or items that it designated for protection do not qualify for protection, the designating party must promptly notify all other parties that it is withdrawing the mistaken designation.

1 5.2 Manner and Timing of Designations. Except as otherwise provided in this
2 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or
3 ordered, disclosure or discovery material that qualifies for protection under this agreement
4 must be clearly so designated before or when the material is disclosed or produced.

5 (a) Information in documentary form: (*e.g.*, paper or electronic documents
6 and deposition exhibits, but excluding transcripts of depositions or other
7 pretrial or trial proceedings), the designating party must affix the word
8 “CONFIDENTIAL” to each page that contains confidential material. If
9 only a portion or portions of the material on a page qualifies for
10 protection, the producing party also must clearly identify the protected
11 portion(s) (*e.g.*, by making appropriate markings in the margins).

12 (b) Testimony given in deposition or in other pretrial proceedings: the
13 parties and any participating non-parties must identify on the record,
14 during the deposition or other pretrial proceeding, all protected
15 testimony, without prejudice to their right to so designate other
16 testimony after reviewing the transcript. Any party or non-party may,
17 within fifteen days after receiving the –transcript of the deposition or
18 other pretrial proceeding, designate portions of the transcript, or exhibits
19 thereto, as confidential. If a party or non-party desires to protect
20 confidential information at trial, the issue should be addressed during the
21 pre-trial conference.

22 (c) Other tangible items: the producing party must affix in a prominent
23 place on the exterior of the container or containers in which the
24 information or item is stored the word “CONFIDENTIAL.” If only a
25 portion or portions of the information or item warrant protection, the

1 producing party, to the extent practicable, shall identify the protected
2 portion(s).

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
4 designate qualified information or items does not, standing alone, waive the designating party's
5 right to secure protection under this agreement for such material. Upon timely correction of a
6 designation, the receiving party must make reasonable efforts to ensure that the material is
7 treated in accordance with the provisions of this agreement.

8 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

9 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
10 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
11 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
12 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
13 challenge a confidentiality designation by electing not to mount a challenge promptly after the
14 original designation is disclosed.

15 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
16 regarding confidential designations without court involvement. Any motion regarding
17 confidential designations or for a protective order must include a certification, in the motion or
18 in a declaration or affidavit, that the movant has engaged in a good faith meet and confer
19 conference with other affected parties in an effort to resolve the dispute without court action.
20 The certification must list the date, manner, and participants to the conference. A good faith
21 effort to confer requires a face-to-face meeting or a telephone conference.

22 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
23 intervention, the designating party may file and serve a motion to retain confidentiality under
24 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
25 persuasion in any such motion shall be on the designating party. Frivolous challenges, and

1 those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and
2 burdens on other parties) may expose the challenging party to sanctions. All parties shall
3 continue to maintain the material in question as confidential until the court rules on the
4 challenge.

5 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
6 **OTHER LITIGATION**

7 If a party is served with a subpoena or a court order issued in other litigation that
8 compels disclosure of any information or items designated in this action as
9 “CONFIDENTIAL,” that party must:

- 10 (a) promptly notify the designating party in writing and include a copy of the
11 subpoena or court order;
12 (b) promptly notify in writing the party who caused the subpoena or order to issue
13 in the other litigation that some or all of the material covered by the subpoena or
14 order is subject to this agreement. Such notification shall include a copy of this
15 agreement; and
16 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
17 designating party whose confidential material may be affected.

18 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

19 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
20 confidential material to any person or in any circumstance not authorized under this agreement,
21 the receiving party must immediately (a) notify in writing the designating party of the
22 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
23 protected material, (c) inform the person or persons to whom unauthorized disclosures were
24 made of all the terms of this agreement, and (d) request that such person or persons execute the
25 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

1 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
2 **PROTECTED MATERIAL**

3 When a producing party gives notice to receiving parties that certain inadvertently
4 produced material is subject to a claim of privilege or other protection, the obligations of the
5 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
6 provision is not intended to modify whatever procedure may be established in an e-discovery
7 order or agreement that provides for production without prior privilege review. The parties
8 agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

9 **10. NON TERMINATION AND RETURN OF DOCUMENTS**

10 Within 60 days after the termination of this action, including all appeals, each receiving
11 party must return all confidential material to the producing party, including all copies, extracts
12 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
13 destruction.

14 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
15 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
16 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
17 work product, even if such materials contain confidential material.

18 The confidentiality obligations imposed by this agreement shall remain in effect until a
19 designating party agrees otherwise in writing or a court orders otherwise.

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 DATED this 26th day of October, 2018.

3 s/ George O. Tamblyn

4 George O. Tamblyn, WSBA # 15429

5 **MERCER ISLAND LAW GROUP PLLC**

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ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any documents in this proceeding shall not, for the purposes of this proceeding or any other proceeding in any other court, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law.

DATED this 6th day of ~~October~~ ^{Nov.}, 2018.


The Honorable Robert S. Lasnik

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of

_____ [print or type full address], declare under penalty
of perjury that I have read in its entirety and understand the Stipulated Protective Order that
was issued by the United States District Court for the Western District of Washington on
_____ 2018, in the case of *Laura Bennett v. Acentis Corporation*, Case No. 2:18-
cv-01388-RSL. I agree to comply with and to be bound by all the terms of this Stipulated
Protective Order and I understand and acknowledge that failure to so comply could expose me
to sanctions and punishment in the nature of contempt. I solemnly promise that I will not
disclose in any manner any information or item that is subject to this Stipulated Protective
Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Western District of Washington for the purpose of enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____
City and State where sworn and signed: _____
Printed Name _____
Signature: _____